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d/b/a Glidewell Laboratories

8  
9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 JAMES R. GLIDEWELL DENTAL  
CERAMICS, INC. dba GLIDEWELL  
13 LABORATORIES, a California  
corporation,

14 Plaintiff,

15 vs.

16 KEATING DENTAL ARTS, INC., a  
17 California corporation

18 Defendant.

19  
20 AND RELATED  
21 COUNTERCLAIMS.

Case No. SACV11-01309-DOC(ANx)

**NOTICE OF ERRATA RE  
APPENDIX OF EVIDENCE IN  
SUPPORT OF JAMES R.  
GLIDEWELL DENTAL  
CERAMICS, INC.'S MOTION FOR  
SUMMARY JUDGMENT (Dkt #90)**

Hearing

Date: December 17, 2012  
Time: 8:30 a.m.  
Cttrm: 9D, Hon. David O. Carter

Pre-Trial Conf.: January 28, 2013  
Jury Trial: February 26, 2013

Plaintiff James R. Glidewell Dental Ceramics, Inc., dba Glidewell Laboratories (“Glidewell”), respectfully submits this *Notice of Errata* to address an inadvertent error in Glidewell’s Appendix of Evidence in Support of James R. Glidewell Dental Ceramics, Inc.’s Motion for Summary Judgment (“Appendix”) filed on November 19, 2012, as Docket #90.

In Glidewell’s Appendix, Exhibit 87 was inadvertently shown as being filed under seal and omitted from the Appendix. Exhibit 87 was not filed under seal. To rectify this inadvertent error, Glidewell submits Exhibit 87 attached as Exhibit A.

Glidewell apologizes for any confusion or inconvenience.

Respectfully submitted,

Dated: December 5, 2012

SNELL & WILMER L.L.P.

By: s/Philip J. Graves

Philip J. Graves

Greer N. Shaw

Attorneys for Plaintiff

James R. Glidewell Dental Ceramics, Inc. dba  
Glidewell Laboratories

# Exhibit 87

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 KEATING DENTAL ARTS, INC.

IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL  
 CERAMICS, INC. dba GLIDEWELL  
 LABORATORIES,

Plaintiff,

v.

KEATING DENTAL ARTS, INC.

Defendant.

AND RELATED COUNTERCLAIMS.

Civil Action No.  
 SACV11-01309-DOC(ANx)

**KEATING DENTAL ARTS,  
 INC.'S RESPONSES TO  
 PLAINTIFF'S FIRST SET OF  
 REQUESTS FOR  
 ADMISSION (NOS. 1-11)**

Honorable David O. Carter

1 Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant  
2 Keating Dental Arts, Inc. ("Keating") hereby provides to Plaintiff James R.  
3 Glidewell Dental Ceramics, Inc. d/b/a Glidewell Laboratories ("Glidewell") the  
4 following objections and responses to Glidewell's First Set of Requests for  
5 Admission (Nos. 1-11) served on September 21, 2012. Pursuant to Federal Rule  
6 of Civil Procedure 26(e), Keating reserves the right to supplement its responses  
7 to these requests.

8 **GENERAL RESPONSE AND OBJECTIONS**

9 1. Keating objects to these Requests to the extent that they are  
10 untimely as they were served on Keating after the Court's cutoff for written  
11 discovery as stated in its Scheduling Order entered on December 16, 2011. In  
12 the Court's Order, the discovery cut-off date was set for October 29, 2012 with  
13 all written discovery to be served at least forty-five (45) days before the  
14 discovery cut-off date. These Requests were served by mail on September 21,  
15 2012.

16 2. Keating objects generally to these Requests for Admission to the  
17 extent they ask Keating to admit or deny facts or information not known to  
18 Keating and not in the possession, custody or control of Keating. These  
19 responses are based upon information currently available to Keating and its  
20 counsel and reflect the current state of Keating's knowledge, understanding and  
21 belief respecting the matters about which inquiry was made.

22 3. Keating objects to the Definitions and to each of the Instructions  
23 set forth in Glidewell's Requests for Admission to the extent that they fail to  
24 comply with, or impose obligations in excess of the Federal Rules of Civil  
25 Procedure and the Court's local rules. Keating objects to the Requests for  
26 Admission to the extent they seek information that is irrelevant to the subject  
27  
28

1 matter of the pending action or is not reasonably calculated to lead to the  
2 discovery of admissible evidence.

3 4. Keating objects to Glidewell's Requests for Admission to the  
4 extent they seek the disclosure of information protected by the attorney-client  
5 privilege, the attorney work product doctrine, the common interest or joint  
6 defense privilege, or any other applicable privilege, doctrine, or immunity. The  
7 specific objections stated below on the grounds of attorney-client privilege,  
8 work product privilege, or any other applicable privilege in no way limit the  
9 generality of this objection. Nothing contained in these responses is intended to  
10 be nor should be considered a waiver of any attorney-client privilege, work  
11 product protection, the right of privacy or any other applicable privilege or  
12 doctrine.

13 5. Keating objects to these Requests for Admission to the extent that  
14 they use terms that are vague and/or ambiguous.

15 6. The words and terms in the following responses should be  
16 construed in accordance with their normal meanings and connotations and  
17 should not be interpreted as terms of art or statutorily defined terms.

18 7. Keating objects to Glidewell's definition of the term "KDA" on the  
19 grounds that it is overbroad and beyond the scope of Fed. R. Civ. P. Rule 36  
20 insofar as it purports to include within that term persons and entities over whom  
21 Keating has no control and/or who, as nonparties, are not properly subject to  
22 Fed. R. Civ. P. Rule 36. These responses are made solely on behalf of Keating  
23 Dental Arts, Inc.

24 **RESPONSES TO REQUESTS FOR ADMISSION**

25 **REQUEST FOR ADMISSION NO. 1:**

26 PLAINTIFF's BRUXZIR trademark is a strong mark.

27 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

28 Denied.

1  
2 **REQUEST FOR ADMISSION NO. 2:**

3 BRUXZIR and KDZ BRUXER are both used on dental restorations made  
4 of full contour zirconia and sold to dentists.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

6 Keating objects to this Request for Admission as vague and ambiguous as  
7 to the meanings of “used on” and “made of full contour zirconia.” Keating shall  
8 interpret “used on” to mean “used as a trademark for.” Keating admits that it  
9 sells dental restorations made of monolithic zirconia using the trademark “KDZ  
10 Bruxer.” Keating otherwise denies this request.

11 **REQUEST FOR ADMISSION NO. 3:**

12 There is no “Z” sound in bruxer.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

14 Keating objects to this Request for Admission as vague and ambiguous as  
15 to the meaning of “no ‘Z’ sound in bruxer.” Keating shall interpret “no ‘Z’  
16 sound in bruxer” to mean “when the word ‘bruxer’ is spoken using American  
17 English, the speaker does not pronounce the sound of the letter ‘Z’.” Keating  
18 denies this Request.

19 **REQUEST FOR ADMISSION NO. 4:**

20 There is no “ZIR” sound in bruxer.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

22 Keating objects to this Request for Admission as vague and ambiguous as  
23 to the meaning of “no ‘ZIR’ sound in bruxer.” Keating shall interpret “no ‘Zir’  
24 sound in bruxer” to mean “when the word ‘bruxer’ is spoken using American  
25 English, the speaker does not pronounce the sound of the first syllable of the  
26 word ‘zirconia’.” Keating denies this Request.

27 **REQUEST FOR ADMISSION NO. 5:**

28 DEFENDANT Keating uses the term KDZ BRUXER as a trademark for

1 dental restorations sold to dentists.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

3 Keating objects to this Request as vague and ambiguous in using the  
4 phrase "trademark for dental restorations sold to dentists." Keating admits that  
5 it uses "KDZ Bruxer" as a trade name on Keating's dental restorations made of  
6 monolithic zirconia that are sold to dentists. Keating otherwise denies this  
7 request.

8 **REQUEST FOR ADMISSION NO. 6:**

9 DEFENDANT Keating is attempting to register the trademark KDZ  
10 BRUXER in the United States Patent and Trademark Office.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

12 Keating objects to this Request as vague and ambiguous in using the  
13 phrase "attempting to register." Keating admits that it has filed an application in  
14 the United States Patent and Trademark Office to register "KDZ Bruxer" as a  
15 trademark for use in connection with dental prostheses. Keating otherwise  
16 denies this Request.

17 **REQUEST FOR ADMISSION NO. 7:**

18 DEFENDANT Keating has no knowledge of whether any particular KDZ  
19 BRUXER crown is used to repair a tooth damaged by bruxism.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

21 Denied.

22 **REQUEST FOR ADMISSION NO. 8:**

23 KDZ BRUXER crowns are ordered by dentists using DEFENDANT  
24 Keating forms that do not mention bruxism except as part of the trademark  
25 "KDZ BRUXER."

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

27 Keating objects to this Request as vague and ambiguous in using the  
28 phrase "forms that do not mention bruxism except as part of the trademark



1 'KDZ BRUXER.'" Keating admits that it provides dentists with preprinted  
2 prescription forms that allow the dentists to order Keating's monolithic zirconia  
3 dental restoration products by providing an indication adjacent to the trade name  
4 "KDZ Bruxer," and that the forms themselves do not include on them the  
5 preprinted word "bruxism." Keating otherwise denies this request.

6 **REQUEST FOR ADMISSION NO. 9:**

7 KDZ BRUXER crowns are sold to dentists who normally do not indicate  
8 the reason why the patient needs a crown.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

10 Keating objects to the Request for Admission as vague and ambiguous as  
11 to the meaning of the term "normally" and as to the intended audience of the  
12 phrase "do not indicate." Keating admits that dentists who provide prescriptions  
13 to Keating for crowns offered under the KDZ Bruxer trade name customarily do  
14 not inform Keating on the prescription form of the reason why the patient is in  
15 need of a crown. Keating otherwise denies this Request.

16 **REQUEST FOR ADMISSION NO. 10:**

17 DEFENDANT Keating does not determine whether its KDZ BRUXER  
18 crowns are being sold to dentists for patients who have teeth damaged by  
19 bruxism.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

21 Keating objects to the Request for Admission as vague and ambiguous as  
22 to the meaning of the phrase "does not determine." Keating admits that it does  
23 not require confirmation from dentists that crowns sold by Keating under the  
24 KDZ Bruxer trademark are being sold to them for use on teeth damaged by  
25 bruxism. Keating otherwise denies this Request.

26 ///

27 ///

28 ///

1 **REQUEST FOR ADMISSION NO. 11:**

2 DEFENDANT Keating personnel know of no other dental labs which  
3 currently sell a full contour zirconia crown using a trademark containing the  
4 term "brux" other than Glidewell Laboratories.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

6 Keating denies this Request.

7  
8 KNOBBE, MARTENS, OLSON & BEAR, LLP  
9

10 Dated: October 25, 2012

By: /s/ Lynda J. Zadra-Symes

11 Lynda J. Zadra-Symes  
12 Jeffrey L. Van Hoosear  
13 David G. Jankowski

14 Attorneys for Plaintiff,  
15 KEATING DENTAL ARTS, INC.  
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**PROOF OF SERVICE**

I am a citizen of the United States of America and I am employed in Irvine, California. I am over the age of 18 and not a party to the within action. My business address is 2040 Main Street, Fourteenth Floor, Irvine, California. I am readily familiar with the firm's business practices for the collection and processing of correspondence for mailing, and that mail so processed will be deposited the same day during the ordinary course of business.


On October 25, 2012, I caused the within KEATING DENTAL ARTS, INC.'S RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1-11) to be served on the parties or their counsel shown below, by placing it in a sealed envelope addressed as follows:

***Via Electronic and First Class Mail:***

Leonard Tachner, Esq.  
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I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 25, 2012 at Irvine, California.

  
\_\_\_\_\_  
Claire A. Stoneman

14220083  
102512

***Glidewell Laboratories v. Keating Dental Arts, Inc.***  
**United States District Court, Central, Case No. SACV11-01309-DOC (ANx)**

**CERTIFICATE OF SERVICE**

I hereby certify that on December 5, 2012, I electronically filed the document described as **NOTICE OF ERRATA RE APPENDIX OF EVIDENCE IN SUPPORT OF JAMES R. GLIDEWELL DENTAL CERAMICS, INC.'S MOTION FOR SUMMARY JUDGMENT (Dkt #90)** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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Dated: December 5, 2012

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16139994.1

Certificate of Service  
SACV11-01309-DOC (ANx)

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